**Administrative Structure of Nauru Judiciary**

I**ntroduction**

This report is specially prepared for the purposes of the Universal Periodic Review in respect of the Judiciary. In the last cycle of review and there are other associated issues raised by various commentators during the course of the past 4 years about the functioning of the Judiciary in the Republic. It is important that this report is submitted separately with a brief comment in the actual report so that the peer review can be undertaken based on current status and actual administrative set up.

**Basic structure**

The court structure was substantially overhauled after the last review. Its current structure is in an ascending hierarchy as follows:

1. District Court;
2. Supreme Court;
3. Nauru Court of Appeal.

The three courts are now established under their own respective statutes, *District Court Act 2018*, *Supreme Court Act 2018* and the *Nauru Court of Appeal Act 2018*. This lead to the repeal of the *Courts Act 1972* and the *Appeals Act 1972*. The repeal of the two Acts and the separation of the court by different statutes was necessary to ensure that there is clear legislative separation within the different hierarchy of the courts.

The remote final appellate court being the Australian High Court was replaced by the Nauru Court of Appeal. This was a move similar to other countries including New Zealand and Australia who moved their final appellate court from the Privy Council to their own High Court (Australia) and Supreme Court (New Zealand). The Nauru Court of Appeal now has a much broader jurisdiction on matters which can be appealed and the cost of such appeals is almost negligible.

The Chief Justice is the head of the Judiciary. Under the Constitution, the Chief Justice is also the President of the Nauru Court of Appeal. This is similar to other Commonwealth jurisdictions where the Chief Justice sits in the highest original jurisdiction court and in the final appellate court.

The Registrar is the administrative head of the Department of Judiciary. There are four Deputy Registrar positions established to oversee the different hierarchies of courts, that is, the District Court, the Supreme Court and the Nauru Court of Appeal. The hierarchies of courts under the *District Court Act 2018*, the *Supreme Court Act 2018* and the *Nauru Court of Appeal Act 2018* are separated. The Family Court is also a division of the District Court. The four Deputy Registrars keep separate records of the respective courts. These divisions and specific statutory provisions clearly establish the vertical and horizontal independence of the Judiciary, as follows:

* 1. *horizontal*, in that each individual judicial officer exercises his or her judicial functions independent of any other person or body; and
  2. *vertical*, in that there is an appellate process from the District Court to the Supreme Court and from the Supreme Court to the Nauru Court of Appeal.
  3. The Chief Justice and the Judges of the Supreme Court are currently appointed for life, retiring at the age of 70 years. The Justices of Appeal retire at the age of 75. The Resident Magistrate also retires at the age of 70 years. The Judges remuneration and allowances are now prescribed by the *Judicial Officers Conditions of Service, Salaries and Allowances Regulations 2020*. These Regulations are made under the *Statutory Salaries Act 1974*. It emphasises and reinforces *Article 65* of the *Constitution[[1]](#endnote-1)*.
  4. The Chief Justice is appointed by the President pursuant to *Article 49(1)* of the *Constitution.* The Judges of the Supreme Court are also appointed under *Article 49(2)[[2]](#endnote-2)*. The tenure of Judges is provided under Section 10(1) of the *Supreme Court Act 2018*, which is on retirement, completion of fixed term contract or resignation.
  5. On the other hand, a Judge can only be removed from office pursuant to *Article 51* of the *Constitution*. The tenure of judges is adequately protected under the *Constitution*. The only ground for removal of a Judge is on incapacity and misconduct. The additional protection for the tenure is that a Judge can only be removed from his or her office if it is approved by two thirds majority of the current Parliament, that is, 12 of the 18 members must vote to remove a Judge on the 2 grounds only. The Speaker is the 19th member. This constitutional provision no doubt provides absolute protection for Judges’ tenure.
  6. Resident Magistrates are appointed by the President in consultation with the Chief Justice as prescribed in *Section 4(3)* of the *District Court Act 2018*. District Court itself is a creature of the *Constitution*; *Article 56*. Resident Magistrates can be appointed until retirement or on a fixed term contract. Furthermore, there are also magistrates appointed for a specific case or matter in certain circumstances of conflict. Any allegation against a magistrate is now subject to an inquiry or hearing by a Judicial Complaints Tribunal[[3]](#endnote-3) established under the *District Court Act 2018* as amended in 2020. The Judicial Complaints Tribunal in appointed by the Chief Justice and not the Executive Branch.
  7. The Nauru Court of Appeal is a creature of the *Constitution* in 2018*; Article 57*. In the 2016 review, appeals on limited matters were permissible by leave to the High Court of Australia. In May 2018, a new court of appeal was established in Nauru. Its powers are contained in *Article 57* of the *Constitution* and the *Nauru Court of Appeal Act 2018*. This new apex court now allows appeals from:

1. land matters;
2. constitutional issues, interpretation and applications;
3. matrimonial matters;

which were not allowed under the repealed *Appeals Act 1972* to the High Court of Australia.

* 1. The constitutional redress application under *Article 55* of the *Constitution* allows the Cabinet to refer constitutional questions to the Supreme Court to be also reviewed by the Nauru Court of Appeal under a review jurisdiction as opposed to an appellate jurisdiction[[4]](#endnote-4). Before these changes the opinion of the Chief Justice under the Constitution was not reviewable or appealable. This change is important to ensure a more intense judicial scrutiny and interpretation of the Constitution, particularly when more often than not this arises out of political differences. It also removes any slightest presumption of the Chief Justice being biased one way or another, this is because the Court of Appeal will have 3 Judges sitting as a panel to review the opinion of the Chief Justice.
  2. The Court of Appeal Justices are appointed under the *Constitution* by the President in consultation with the Chief Justice under *Article 57(4)*.
  3. During the reporting period, the following judicial appointments were made:

1. 2 Resident Magistrates;
2. 3 Chief Justices – one passed away and the other recently retired and has joined the Nauru Court of Appeal. After the retirement of the Chief Justice in July 2020, a Chief Justice has been designated but cannot travel to Nauru due to flight restrictions;
3. Supreme Court Judges – 2 acting judges for a specific case, 2 permanent judges;
4. Justice of Appeal in the Nauru Court of Appeal.
   1. The *Leadership Code Act 2016* also applies to the Chief Justice and judicial officers. *Section 8(g)* and *(k)* of the Act, includes the Chief Justice and judicial officers as Leaders that are subject to its provisions[[5]](#endnote-5).

**Other developments**

* 1. The Pacific Judicial Strengthening Institute (PJSI) has been working very closely with the Judiciary for the last 3 years. It has assisted in the training of Judiciary staff and judicial officers. Also, PJSI held workshops within the Republic.
  2. Recently, it has assisted the Court in establishing its first electronic case management system. This includes an electronic database of all cases and tracking the progress of the cases. The system is ready to also commence electronic filing of documents in court.
  3. A website will also follow this now. The website is necessary to ensure the right message is given by the Judiciary including regular news to avoid unnecessary criticism of the Judiciary. This includes on many occasions there has been unwarranted and malicious allegations against the Judiciary for no particular reason other than based on hearsay.
  4. The Parliament has also amended all the Courts Acts including the *Criminal Procedure Act 1972* to allow for the establishment of virtual court rooms. This is an important development moving into the digital and electronic era. With the current set up, the court sittings in the Republic can be fully undertaken through audio visual link. In order to facilitate this, the *Oaths Affirmations and Statutory Declarations Act* *1976* was also amended to allow for oaths to be administered by virtual means.
  5. The PJSI working in consultation with New Zealand is also assisting the Republic in preparing Bench Books for the various hierarchy of the courts. This project is anticipated to be completed in the next 12 months.
  6. The overall objective of the Court is to ensure serious cases including where the witnesses or the victims are vulnerable to have the case tried in the shortest possible time. Amendments have been made to various legislation to ensure this is put in place.

**Judicial salaries**

* 1. Under Article 65 of the Constitution, the Judges’ salaries are to be prescribed by a written law. This has been the practice in the Republic until the early 1980s. This has now been revived under the *Statutory Salaries Act 1974.* The *Judicial Officers Salaries and Conditions of Service Regulations 2020* now prescribes the remuneration and other terms and conditions of the Chief Justice, Judges of the Supreme Court and Justices of Appeal. The Act also provides that these benefits are not to be changed in any manner which is likely to adversely affect it. In other words, the remuneration and other benefits cannot be reduced.

**Judgment reporting**

* 1. The reporting of judgments of the court is an important consideration. Currently all judgments are delivered in open court. Nauru does not have a print media as such these judgments do not get reported. However the judgments of the Court are ordinarily published in PacLII, a database of judgments reported from many countries in the Pacific region.
  2. The next phase of the judicial progress requires regular reporting of judgments for public consumption in the Republic. Assistance is needed for this purpose so that the summaries of judgments or decisions of the court are regularly disseminated to the community. The education process is a necessity and not a want.
  3. Judgments are to be also compiled annually and kept in bound copies. This was done in the past. It has stopped for some time now. It is another effort of the Judiciary now to revive this to be able to properly edit, annotate and maintain an update Nauru Law Reports.

**Public participation**

* 1. Under the written laws, a fair reporting of all judgments is permissible; *Section 23*. In addition, members of the public are also allowed to lodge complaints in respect of a judicial officer to the Chief Justice; *Section 26*. This will ensure that judicial officers conduct themselves in a manner which is reasonable and prudent and expected of a judicial officer. It is also open to the people to discuss decisions of the Court on the merits of the judgments or decisions in public. The only restriction is a direct criticism of a judicial officer, which is a limitation placed to protect the integrity of the justice system. It is important for people to have full trust, faith and confidence in its judicial system.

**Other arrangements with countries**

* 1. Further, through various bilateral arrangements, the judicial staff has been able to attend trainings in Samoa, New Zealand and Australia. The Judiciary has a Memorandum of Understanding with the Judiciary of Papua New Guinea on human resources training and facilities upgrading. Opportunities are also sought for training in other parts of the world so that the Judiciary can build its capacity.

1. A judge’s remuneration and allowance is a direct charge on the Treasury Fund. It is protected salary. It cannot be altered in any way which may adversely affect the same. [↑](#endnote-ref-1)
2. The Judges of the Supreme Court are appointed by the President in consultation with the Chief Justice. This is prescribed in Section 10 of the *Supreme Court Act 2018* and generally Part 3. The *Supreme Court Act 2018* prescribes the appointment process as required by *Article 49(3)* of the *Constitution*. [↑](#endnote-ref-2)
3. Established by the District Court (Amendment) Act 2020. [↑](#endnote-ref-3)
4. Under *Article 55*, the Supreme Court gives an advisory opinion only as to the interpretation and effect of the *Constitution*. There is no further means to redress this question in the event an aggrieved person may be of the opinion that the decision was wrong in law. *Part 9* of the *Nauru Court of Appeal Act 2018* provides for the following:

   *(1)*  *‘…review the opinion of the Supreme Court pronounced under Article 55 of the Constitution.*

   *(2) The opinion of the Court of Appeal* ***shall supersede the opinion of the Supreme Court.****’*  [emphasis added] [↑](#endnote-ref-4)
5. *Section 13(b)* of the *Leadership Code Act 2016* states that *a leader in the exercise of his or her power must uphold democratic processes and institutions, respecting the rule of law, the legislature and the independence of the judiciary.* [↑](#endnote-ref-5)